IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.388/2002

Suresh Rawat S/o Ganga Ram Rawat
Versus
State of Rajasthan

Date of Judgment :::: 8th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri R.K. Mathur, Counsel for accused appellant
Smt. Nirmala Sharma,P.P., for the respondent State
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//Reportable//

By the Court:-

This appeal, on behalf of accused-appellant Suresh Rawat S/o Ganga Ram Rawat, is directed against the judgment and order dated 18th January, 2002, passed by the Additional Sessions Judge (Fast Track), Alwar, in Sessions Case No.104/2001 (64/2001), whereby the appellant was convicted as under:-

Under Sections	***Sentence of Imprisonment***
304-B, IPC	To undergo 10 years rigorous imprisonment
498-A, IPC	To undergo 2 years rigorous imprisonment and a fine of Rs.1,000/-; in default of payment of fine, to further undergo 3 months additional rigorous imprisonment.

Both the sentences were ordered to run concurrently.

The learned counsel for the accused-appellant contended that although deceased Anita died within a

period of 7 years from the date of her marriage and her death was abnormal, but there is no iota of evidence that she was subjected to cruelty or harassment by the appellant soon before her death for, or in connection with, demand for dowry, and in absence of such evidence, the presumption under Section 113-B of the Evidence Act was not attracted, but the learned trial court, without considering the said aspect of the matter, convicted the accused-appellant only on the basis of presumption under Section 113-B of the Evidence Act, which is absolutely illegal and the impugned judgment passed by the trial court is liable to be set-aside.

The learned counsel referred the statements of PW-1 Krishnaotar (brother), PW-2 Rajkumar (brother-in-law), PW-3 Radheyshyam (brother-in-law), PW-4 Kumari Babita (sister), PW-5 Ramaotar (uncle), PW-6 Mukesh and PW-7 Sita Devi (mother), and contended that these prosecution witnesses, in their statements, have stated that Anita was married with Suresh Rawat in a 'sammelan' about 5 to 6 years ago; Suresh Rawat used to beat Anita; he was unemployed. On 21.4.2001 a telephonic message came from Anil that Anita sustained burn injuries. Thereafter they went and saw Anita, who had already died. He contended that although two ingredients of Section 304-B, IPC, are proved in the case, but none of the prosecution witness states that she was subjected to cruelty or assault soon before her death for, or in connection with demand for dowry, therefore, conviction of the accused-

appellant under Section 304-B, IPC, is liable to be set aside.

The learned counsel for the appellant, alternatively, contended that in case this Court does not agree with his submission and the appellant is not acquitted from the charge of offence under Section 304-B, IPC, then at-least, the case of the appellant for reduction of his sentence of imprisonment may be considered. It is contended that the appellant is in judicial custody since 22nd April, 2001, and he has already remained in custody for six years, therefore, looking to the entire facts and circumstances of the case including the quality of prosecution evidence, the sentence of imprisonment awarded by the trial court for 10 years rigorous imprisonment be reduced to a minimum period of sentence of 7 years rigorous imprisonment.

The learned Public Prosecutor supported the impugned judgment passed by the trial court and contended that there is no merit in this appeal and the same be dismissed.

I have considered the submissions of learned counsel for both the parties and examined the impugned judgment as well as the record of the trial court.

Exhibit P-1, a written-report, was lodged by PW-1 Krishnaotar, brother of deceased Anita, on 22.4.2001, wherein it was mentioned that marriage of his sister took place in the year 1996 with Suresh Rawat, who was drunkard and beat his sister. He received a telephonic

message from Alwar yesterday from the shop-owner of Suresh, where Suresh was working, that at about 9'O clock, in the night, his sister has burnt badly. It was further mentioned that it appears to him that Suresh Rawat has set his sister on fire deliberately. On the basis of this information, FIR No.29/2001 (Exhibit P-2) was registered under Section 304-B, IPC. The site-plan (Exhibit P-6) was prepared. The inquest-report was also prepared. Anita Rawat was medically examined and in the postmortem-report (Exhibit P-9), the Medical Board has opined as under:-

> "We the members of Medical Board are of opinion that cause of death is shock due to extensive burn as mentioned in PMR sufficient in ordinary course of nature to cause death. However, viscera are preserved, sealed and handed over to police."

As per FSL Report (Exhibit P-10), the result of examination was that - "On chemical examination, portions of viscera (1-5) from two packets marked A and B gave negative tests for metallic poisons, ethyl and methyl alcohol, cyanide, alkaloids, barbiturates, tranquillizers and insecticides."

The appellant has been convicted under Section 304-B as well as 498-A, IPC, therefore, it will be relevant to refer both the Sections, which are as under:-

> "**304B. Dowry death**.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was

subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

"**498A. Husband or relative of husband of a woman subjecting her to cruelty**.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

Section 113-B of the Evidence Act is also relevant for the purpose of Section 304-B, IPC, therefore, Section 113-B, IPC is also reproduced as under:-

> "113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.
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> Explanation.- For the purposes of this Section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860)."

In order to convict an accused for an offence under Section 304B, IPC, the following ingredients must be satisfied in a case:-

(1) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(2) such death must have occurred within 7 years of her marriage;

(3) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(4) such cruelty or harassment must be for or in connection with demand of dowry.

If the aforementioned ingredients are established by acceptable evidence in a case then such death of a woman shall be called "dowry death" and such husband or his relative will be deemed to have caused her death. It is relevant to mention that punishment for the offence of

dowry death u/s.304B, IPC, is imprisonment of not less than 7 years, which may extend to imprisonment for life. Unlike under Section 498A, IPC, husband or relative of husband of a woman subjecting her to cruelty shall be liable for imprisonment for a term which may extend to three years and shall also be liable to fine. Normally, in a criminal case accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, may be direct or circumstantial or both. But in case of an offence under Section 304B, IPC, an exception is made by deeming provision as to nature of death as "dowry death" and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the above mentioned ingredients of the offence are proved by the prosecution.

The learned counsel for the accused-appellant does not dispute that the first two ingredients of the offence under Section 304B, IPC, are fully proved in the case, but so far as the third and fourth ingredients, as discussed above, that Anita was subjected to cruelty or harassment by her husband or by the relatives of her

husband soon before her death, and said cruelty or harassment must be for or in connection with demand of dowry, are concerned, it is contended on behalf of the appellant that the same are not proved and there is no consistent evidence in this regard against the appellant.

In view of the above position of law, it is now necessary to discuss the prosecution evidence of the present case in respect of last two ingredients of the offence under Section 304B, IPC, that whether Anita was subjected to cruelty or harassment soon before her death by the appellant Suresh or not, and if the answer to the question is affirmative, then further whether the said cruelty or harassment was for, or in connection with, the demand of dowry.

PW-1 Krishnaotar, in his statement, has stated only in respect of marriage of his sister with accused and beating by accused to her. He further stated about telephonic message received by him from Anil, who was employer of accused Suresh. He has not stated a single word about cruelty or harassment by Suresh with Anita for, or in connection with, the demand of dowry.

It is also relevant to mention that PW-1 Krishnaotar, in his cross-examination, admitted that it was a second marriage of Anita with appellant Suresh Rawat.

PW-2 Raj Kumar, PW-3 Radheyshyam, PW-4 Kumari Babita and PW-5 Ramaotar have stated about marriage of Anita with Suresh and she was being harassed by appellant

as he used to take liquor everyday and beat her. They have not stated anything about demand of dowry at the time of marriage or subsequent thereto or any assault or harassment with Anita by appellant for, or in connection with, demand of dowry at any time or soon before her death.

PW-6 Mukeshchandra and PW-7 Sita Devi, both, have stated about harassment of Anita by Suresh in connection with demand of dowry; but their statements show that they are general in nature. No specific instance of any day, month or year has been given that Anita was subjected to cruelty or harassment by appellant for, or in connection with demand of dowry.

The other prosecution witnesses are not relevant for the purpose of proving that the deceased was subjected to cruelty or harassment by her husband or his relative for, or in connection with, demand of dowry.

The presumption under Section 113-B of the Evidence Act comes into play only when all the ingredients of Section 304-B, IPC, are, prima-facie, established.

As discussed above, the abnormal death of Anita within 7 years of her marriage is proved, but from the scrutiny of the prosecution-witnesses including mother, brother and sister of the deceased, it is clear that she was not subjected to cruelty or harassment by appellant for, or in connection with, demand of dowry, soon before

her death. In these circumstances, the third ingredient of Section 304-B, IPC, as mentioned above, was not established in the present case and presumption under Section 113-B, of the Evidence Act was not attracted, but the learned trial court, without considering this aspect of the matter, wrongly applied the provisions of Section 113-B, of the Evidence Act, and only on the basis of presumption, without any specific evidence, convicted the accused-appellant under Section 304-B, IPC.

From the above discussion, it is apparent on the record that it was a second marriage of Anita with appellant Suresh Rawat and further that appellant Suresh Rawat was not in employment, therefore, in these circumstances the question of demand of dowry was not arising and, in fact, there is no evidence about demand of dowry at the time of marriage or subsequent thereto or any assault or harassment of the deceased by the appellant or his relatives for, or in connection with, demand of dowry.

In these circumstances the judgment of the trial court in respect of conviction of the appellant under Section 304-B, IPC, cannot be allowed to be sustained and it is liable to be set aside and the same is hereby set-aside.

So far as offence under Section 498-A, IPC, is concerned, it is on the record that PW-6 Mukeshchandra and PW-7 Sita Devi, both, have stated that as and when

Anita came at her parental house, she used to tell them that she is being harassed by her in-laws for, or in connection with, demand of dowry. The statement of PW-6 and PW-7 are general in nature and they are not corroborated with the statements of other prosecution witnesses including the statement of brother, sister and brother-in-law of the deceased, therefore, it can not be held that she was being harassed for or in connection with demand of dowry. However, from the prosecution evidence it is clear that Anita was subjected to cruelty by appellant as he was unemployed and habitual drunkard and used to beat her, therefore, from statements of prosecution witnesses it appears that Anita might have been subjected to cruelty but certainly not for, or in connection with demand of dowry by appellant soon before her death. Therefore, the ingredients of Section 498-A, IPC, are fully made out and the learned trial court was justified in convicting the accused under Section 498-A, IPC.

In view of the above discussion and reasons, the appeal of appellant is partly allowed. His conviction and sentence passed by the trial court under Section 304-B, IPC, is set-aside, but his conviction under Section 498-A, IPC, is maintained. The trial court has awarded 2 years rigorous imprisonment under Section 498-A, IPC, whereas the appellant has already remained in jail for about six years, therefore, he has already completed his sentence of imprisonment awarded under Section 498-A,

IPC. In these circumstances it is directed that the appellant, who is in jail, be set at liberty forthwith, if his custody is not required in any other case.

(Narendra Kumar Jain), J.

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